

IN THE DRAWINGS:

No amendments.

Claim Objections

Claim 25 was objected to as being of improper dependent form. The claim has been amended to obviate the objection, whereby the objection should now be withdrawn.

Claim Rejections - 35 U.S.C. § 102

Claims 1-7, 18, and 26-27 were rejected under 35 U.S.C. §102(b) as being anticipated by the Armstrong et al. U.S. patent no. 5,5958,106.

In order to assert that a patent claim is anticipated under 35 U.S.C. §102(b), the examiner must demonstrate identity of the invention, see *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 U.S.P.Q. 781, 789 (Fed. Cir. 1983) cert. denied, 465 U.S. 1026[224 U.S.P.Q. 520] (1984), *overruled in part on another ground, SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F. 2d 1107, 1125, 227 U.S. P.Q. 577, 588-89 (Fed. Cir. 1985) (in banc). See also *Minnesota Mining and Manufacturing v. Johnson & Johnson*, 24 U.S.P.Q. 2d 1321 (Fed. Cir.) 1992). In the present case, claim 1 requires that the reductant metal be "... present in less than or equal to the amount needed to reduce the halide vapor to the elemental material or alloy ...". The Armstrong et al. '106 patent, as stated in the specification of this application, teaches and relies upon an excess over stoichiometric amount of reducing metal in order to maintain the temperature of the reduction product lower than the sintering point of any of the products of the reactor. Therefore, claim 1 is not anticipated by the Armstrong et al. '106 patent, which teaches

directly away from claim 1. Claim 18 contains the same limitation as does claim 1 and it too is not anticipated by the Armstrong et al. '106 patent.

Claims 26 and 27 are canceled without prejudice, since at the present time, there is no evidence to indicate whether the product of the present invention is different from the product of the Armstrong et al. '106 patent. The applicants reserve the right to submit evidence in the future.

Claim Rejections - 35 U.S.C. §103(a)

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over the Armstrong et al. '106 patent. Claim 8 is dependent on claim 7 and ultimately on claim 1. Since the Armstrong et al. patent depends on an excess of reductant metal to maintain the reaction products below the sintering temperature of the produced metal or alloy, and claim 1 is opposite to the teaching of the Armstrong et al. '106 patent, this rejection of claim 8 is untenable. The present invention is the antithesis of the invention described in the Armstrong et al. '106 patent and the Armstrong '106 patent cannot be used as a reference, either under §102 or §103 to deny patentability of the subject claims.

Claims 9-16 and 19-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Armstrong et al. '106 patent in view of the Okudaira et al. U.S. patent no. 4,902,341.

The applicability of the Armstrong et al. '106 patent to the present claims has already been discussed and was shown that the present claims rely on a teaching that is opposite to the Armstrong et al. '106 patent. The citation of the Okudaira et al. '341 patent avails the examiner not at all. The Okudaira et al. '341 patent teaches a method of making titanium and its alloys in

which the reaction products are in the molten state, see column 7, lines 8-9, column 7, lines 48-56, the paragraph bridging columns 8 and 9 as well as the paragraph bridging columns 10 and 11. There is no doubt that the '341 patent is directly opposite to the present invention since the reaction products there disclosed are all in a molten state whereas the reaction products of the present invention require that "...the particulate elemental material or alloy remain unsintered...", see claims 1 and 18 of the subject invention. Accordingly, each of the claims as now presented in this application is drawn to patentable subject matter in view of either the Armstrong et al. '106 patent or any combination of the Armstrong et al. patent and the Okudaira et al. '341 patent.

Provisional Obviousness Type Double Patent Rejections

The examiner rejected claims 1-3, 6, 18, 21, 23, 26 and 27 as being unpatentable over certain claims of the Armstrong et al. U.S. patent no. 5,779,761. The statements with respect to the differences between the subject claimed matter and the disclosure of the Armstrong et al. '106 patent pertain to the Armstrong et al. '761 patent, and therefore, this rejection cannot stand and should be withdrawn.

Claims 1-3, 6, 18, 21, 23, 26 and 27 were provisionally rejected on a ground of nonstatutory obviousness-type double patenting over claims 1 and 28 of copending application Serial No. 10/530,775. Claims 1 and 28 of the above-mentioned copending application each require an excess amount of reducing metal in order to cool the products of the reaction. This patent application teaches away from the subject invention and cannot function as a provisional obviousness-type reference.

Serial No. 10/530,783
Filed September 28, 2005
Examiner Caitlin A. Fogarty
Art Unit 4116
Docket No. ITP 11A.1 - U.S.

All matters having been attended to, it is respectfully suggested that this application is in condition for allowance and such action is requested.

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Respectfully submitted,

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By

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